

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLI GRAY and all others similarly situated,

NO. CV-09-251-EFS

Plaintiffs,

PROTECTIVE ORDER

v.

SUTTELL & ASSOCIATES; MIDLAND FUNDING, LLC; MARK T. CASE and JANE DOE CASE, husband and wife; and KAREN HAMMER and JOHN DOE HAMMER,

Defendants.

On August 6, 2010, Plaintiff filed a Motion for Protective Order (Ct. Rec. [65](#)). Defendant Suttell & Associates ("Suttell") stipulates to Plaintiff's proposed Protective Order with one exception: it asks that the Court strike paragraph 6.2(i), which would allow Plaintiff to disclose "CONFIDENTIAL" information to "counsel representing similar claims against the same defendants," upon ten-days notice to Suttell. Plaintiff did not reply. Given Suttell's interest in limiting the use of confidential and proprietary information to the instant matter, the Court finds good cause to strike paragraph 6.2(i). Based upon the

1 parties' stipulation and the Court's finding, the following protective
2 order is **HEREBY ENTERED:**

3 **I. PURPOSES AND LIMITATIONS**

4 Disclosure and discovery activity in this action may involve
5 production of confidential, proprietary, or private information for which
6 special protection from public disclosure and from use for any purpose
7 other than prosecuting this litigation would be warranted. This Order
8 does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords extends only to the limited
10 information or items that are entitled, under the applicable legal
11 principles, to treatment as confidential. As set forth in Section 10,
12 below, this Protective Order creates no entitlement to file confidential
13 information under seal; the procedures that must be followed and the
14 standards that will be applied when a Party seeks permission from the
15 Court to file material under seal will be governed by applicable law.

16 **1. DEFINITIONS**

17 1.1. Party: any party to this action, including all of its officers,
18 directors, employees, consultants, retained experts, and outside counsel
19 (and their support staff).

20 1.2. Disclosure or Discovery Material: all items or information,
21 regardless of the medium or manner generated, stored, or maintained
22 (including, among other things, testimony, transcripts, or tangible
23 things) that are produced or generated in disclosures or responses to
24 discovery in this matter.

1 1.3. "Confidential" Information or Items: information (regardless
2 of how generated, stored or maintained) or tangible things that qualify
3 for protection under standards developed under Fed. R. Civ. P. 26(c).

4 1.4. Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 1.5. Producing Party: a Party or non-party that produces Disclosure
7 or Discovery Material in this action.

8 1.6. Designating Party: a Party or non-party that designates
9 information or items that it produces in disclosures or in responses to
10 discovery as "Confidential."

11 1.7. Protected Material: any Disclosure or Discovery Material that
12 is designated as "Confidential."

14 1.8. Outside Counsel: attorneys who are not employees of a Party but
15 who are retained to represent or advise a party in this action.

16 1.9. House Counsel: attorneys who are employees of a Party.

17 1.10. Counsel (without qualifier): Outside Counsel and House Counsel
18 (as well as their support staffs).

19 1.11. Expert: a person with specialized knowledge or experience in
20 a matter pertinent to the litigation who has been retained by a Party or
21 its/her/his counsel to serve as an expert witness or as a consultant in
22 this action and who is not a past or a current employee of a Party or of
23 a competitor of a Party and who, at the time of retention, is not
24 anticipated to become an employee of a Party or a competitor of a Party.

25 This definition includes a professional jury or trial consultant retained
26 in connection with this litigation.

1 1.12. Professional Vendors: persons or entities that provide
2 litigation support services (e.g., photocopying; videotaping;
3 translating; preparing exhibits or demonstrations; organizing, storing,
4 retrieving data in any form or medium; etc.) and their employees and
5 subcontractors.

6 **2. SCOPE**

7 The protections conferred by this Order cover not only Protected
8 Material (as defined above), but also all copies, excerpts, summaries,
9 or compilations thereof, plus testimony, conversations, or presentations
10 by parties or counsel to or in court or in other settings that might
11 reveal Protected Material.

12 **3. DURATION**

13 Even after the termination of this litigation, the confidentiality
14 obligations imposed by this Order shall remain in effect until a
15 Designating Party agrees otherwise in writing or a Court order otherwise
16 directs.

17 **4. DESIGNATING PROTECTED MATERIAL**

18 4.1. Exercise of Restraint and Care in Designating Material for
19 Protection. Each Party or non-party that designates information or items
20 for protection under this Order must use good faith efforts to limit any
21 such designation to specific material that qualifies under the
22 appropriate standards. A Designating Party must use good faith efforts
23 to designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify - so that other
25 portions of the material, documents, items, or communications for which

1 protection is not warranted are not swept unjustifiably within the ambit
2 of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited.
4 Designations that are shown to be clearly unjustified, or that have been
5 made for an improper purpose (e.g., to unnecessarily encumber or retard
6 the case development process, or to impose unnecessary expenses and
7 burdens on other parties), may expose the Designating Party to sanctions.
8 If it comes to a Party's or a non-party's attention that information or
9 items that it designated for protection do not qualify for protection,
10 that Party or non-party must promptly notify all other parties that it
11 is withdrawing the mistaken designation.

12 4.2. Manner and Timing of Designations. Except as otherwise
13 provided in this Order (see, e.g., second paragraph of section 5.2(a),
14 below), or as otherwise stipulated or ordered, material that qualifies
15 for protection under this Order must be clearly so designated before the
16 material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (apart from
20 transcripts of depositions or other pretrial or trial proceedings), that
21 the Producing Party affix the legend "CONFIDENTIAL" at the top of each
22 page that contains protected material. If only a portion or portions of
23 the material on a page qualifies for protection, the Producing Party also
24 must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins).

1 A Party or non-party that makes original documents or materials
2 available for inspection need not designate them for protection until
3 after the Inspecting Party has indicated which material it would like
4 copied and produced. During the inspection and before the designation,
5 all of the material made available for inspection shall be deemed
6 "CONFIDENTIAL." After the Inspecting Party has identified the documents
7 it wants copied and produced, the Producing Party must determine which
8 documents, or portions thereof, qualify for protection under this Order,
9 then, before producing the specified documents, the Producing Party must
10 affix the legend "CONFIDENTIAL" at the top of each page that contains
11 Protected Material. If only a portion of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify
13 the protected portion(s) (e.g., by making appropriate markings in the
14 margins).
15

16 (b) for testimony given in deposition or in other pretrial or
17 trial proceedings, that the party or non-party offering or sponsoring the
18 testimony identify on the record, before the close of the deposition,
19 hearing, or other proceeding, all protected testimony. When it is
20 impractical to identify separately each portion of testimony that is
21 entitled to protection, and when it appears that substantial portions of
22 the testimony may qualify for protection, the party or non-party that
23 sponsors, offers, or gives the testimony may invoke on the record (before
24 the deposition or proceeding is concluded) a right to have up to 20 days
25 to identify the specific portions of the testimony as to which protection
26 is sought. Only those portions of the testimony that are appropriately

1 designated for protection within the 20 days shall be covered by the
2 provisions of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately
4 bound by the court reporter, who must affix to the top of each such page
5 the legend "CONFIDENTIAL," as instructed by the party or non-party
6 offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than
8 documentary, and for any other tangible items, that the Producing Party
9 affix in a prominent place on the exterior of the container or containers
10 in which the information or item is stored the legend "CONFIDENTIAL."
11 If only portions of the information or item warrant protection, the
12 Producing Party, to the extent practicable, shall also identify the
13 protected portions.

14 4.3. Inadvertent Failures to Designate. If timely corrected, an
15 inadvertent failure to designate qualified information or items as
16 "Confidential" does not, standing alone, waive the Designating Party's
17 right to secure protection under this Order for such material. If
18 material is appropriately designated as "Confidential" after the material
19 was initially produced, the Receiving Party, on timely notification of
20 the designation, must make reasonable efforts to assure that the material
21 is treated in accordance with the provisions of this Order.

22 5. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 5.1. Timing of Challenges. Unless a prompt challenge to a
24 Designating Party's confidentiality designation is necessary to avoid
25 foreseeable substantial unfairness, unnecessary economic burdens, or a

1 later significant disruption or delay of the litigation, a Party does not
2 waive its right to challenge a confidentiality designation by electing
3 not to mount a challenge promptly after the original designation is
4 disclosed.

5 5.2. Meet and Confer. A Party that elects to initiate a challenge
6 to a Designating Party's confidentiality designation must do so in good
7 faith and must begin the process by conferring directly (in voice to
8 voice dialogue; other forms of communication are not sufficient) with
9 counsel for the Designating Party. In conferring, the challenging Party
10 must explain the basis for its belief that the confidentiality
11 designation was not proper and must give the Designating Party ten (10)
12 days to review the designated material, to reconsider the circumstances,
13 and, if no change in designation is offered, to explain the basis for the
14 chosen designation. A Challenging Party may proceed to the next stage
15 of the challenge process only if it has engaged in this meet and confer
16 process first.

18 5.3. Formal Challenge to Designation. If, after engaging in the
19 meet and confer process, a Challenging Party still contends that a
20 confidentiality designation was not proper, the Challenging Party may at
21 any time give written notice to the Designating Party stating its
22 objection to the confidentiality designation. The Designating Party has
23 twenty-five (25) days from receipt of such written notice to apply to the
24 Court for an order specifically designating the Disclosure or Discovery
25 Material at issue as confidential. The party seeking such an order has
26

1 the burden of establishing good cause for the Disclosure or Discovery
2 Material to be treated as confidential.

3 5.4. Treatment of Information While Challenge is Pending.

4 Notwithstanding any challenge to the designation of Disclosure or
5 Discovery Material as confidential, all materials designated as such must
6 be treated as such and subject to this order until one of the following
7 occurs:

8 (a) the Designating Party withdraws its confidentiality
9 designation in writing;

10 (b) the Designating Party fails to apply to the Court for an
11 order designating the material confidential within the time period
12 specified above after receipt of a written challenge to such designation;
13 or

14 (c) the Court decides the material at issue is not subject to
15 protection as confidential under this order.

16 6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

17 6.1. Basic Principles. A Receiving Party may use Protected Material
18 that is disclosed or produced by another party or by a non-party in
19 connection with this case only for prosecuting, defending, or attempting
20 to settle this litigation. Such Protected Material may be disclosed only
21 to the categories of persons and under the conditions described in this
22 Order. When the litigation has been terminated, a Receiving Party must
23 comply with the provisions of section 11, below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at
2 a location and in a secure manner that ensures that access is limited to
3 the persons authorized under this Order.

4 6.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the Court or permitted in writing by the Designating
6 Party, a Receiving Party may disclose any information or item designated
7 CONFIDENTIAL only to:

8 (a) the Receiving Party's Outside Counsel of record in this
9 action, as well as employees of said Counsel to whom it is reasonably
10 necessary to disclose the information for this litigation and who have
11 signed the "Agreement to Be Bound by Protective Order" that is attached
12 hereto as Exhibit A;

13 (b) the named parties to this litigation and the officers,
14 directors, and employees (including House Counsel) of the Receiving Party
15 to whom disclosure is reasonably necessary for this litigation and who
16 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

17 (c) experts (as defined in this Order) of the Receiving Party
18 to whom disclosure is reasonably necessary for this litigation and who
19 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters and videographers, and their staffs,
22 present at any hearing, deposition, or trial who have signed the
23 "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(h) the author of the document or the original source of the information.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three (3) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

1 deliver a copy of this Stipulated Protective Order promptly to the party
2 in the other action that caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested
4 parties to the existence of this Protective Order and to afford the
5 Designating Party in this case an opportunity to try to protect its
6 confidentiality interests in the court from which the subpoena or order
7 issued. The Designating Party shall bear the burdens and the expenses
8 of seeking protection in that court of its confidential material - and
9 nothing in this Order should be construed as authorizing or encouraging
10 a Receiving Party in this action to disobey a lawful directive from
11 another court.

12 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it
14 has disclosed Protected Material to any person or in any circumstance not
15 authorized under this Stipulated Protective Order, the Receiving Party
16 must immediately (a) notify in writing the Designating Party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all copies
18 of the Protected Material, (c) inform the person or persons to whom
19 unauthorized disclosures were made of all the terms of this Order, and
20 (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 **9. FILING PROTECTED MATERIAL**

23 Without written permission from the Designating Party or a Court
24 order secured after appropriate notice to all interested persons, a Party
25 may not file in the public record in this action any Protected Material.

1 A Party that seeks to file under seal any Protected Material must comply
2 with applicable law.

3 **10. FINAL DISPOSITION**

4 Unless otherwise ordered or agreed in writing by the Producing
5 Party, within sixty (60) days after the final termination of this action,
6 each Receiving Party must return all Protected Material to the Producing
7 Party. As used in this subdivision, "all Protected Material" includes
8 all copies, abstracts, compilations, summaries or any other form of
9 reproducing or capturing any of the Protected Material. With permission
10 in writing from the Designating Party, the Receiving Party may destroy
11 some or all of the Protected Material instead of returning it. Whether
12 the Protected Material is returned or destroyed, the Receiving Party must
13 submit a written certification to the Producing Party (and, if not the
14 same person or entity, to the Designating Party) by the sixty day
15 deadline that identifies (by category, where appropriate) all the
16 Protected Material that was returned or destroyed and that affirms that
17 the Receiving Party has not retained any copies, abstracts, compilations,
18 summaries or other forms of reproducing or capturing any of the Protected
19 Material. Notwithstanding this provision, Counsel are entitled to retain
20 an archival copy of all pleadings, motion papers, transcripts, legal
21 memoranda, correspondence or attorney work product, even if such
22 materials contain Protected Material. Any such archival copies that
23 contain or constitute Protected Material remain subject to this
24 Protective Order as set forth in Section 4 (DURATION), above.

25 **11. MISCELLANEOUS**

11.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

11.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

Accordingly, Plaintiff's Motion for Protective Order (Ct. Rec. [65](#)) is **GRANTED IN PART**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and distribute copies to counsel.

DATED this 8th day of September 2010.

S/ Edward F. Shea

EDWARD F. SHEA
United States District Judge

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